IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.404 OF 2006

Baban Kisan Deshmukh ...Appellant
Vs.
Krishna Parshu Kad ...Respondent

Mr U. B. Nighot for the Appellant.
None for the Respondent.

CORAM : A. S. OKA, J.
DATE : APRIL 12, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant. The Appellant is the original Plaintiff.

2. The case of the Appellant-Plaintiff is that his grandfather purchased the suit property by registered Sale Deed dated 11th June, 1947 executed by one Babu Rangu Kad at the price of Rs.600/-. The case of the Appellant-Plaintiff is that though his grandfather expired on 14th May, 1950, the Respondent-Defendant is claiming that on 02nd August, 1950 by a registered Sale Deed, the grandfather of the Appellant Yashwantrao sold the property to him for consideration of only Rs.300/-.

3. The Appellant filed a suit for declaration of ownership and for possession. The suit is dismissed

by the Trial Court and in Appeal preferred by the Appellant, the First Appellate Court has confirmed the said decree. The courts below have accepted that the Appellant's grandfather Yashwantrao sold the suit property by a registered Sale Deed dated 02nd August, 1950 to the Respondent.

4. The learned Advocate appearing for the Appellant submitted that there is evidence on record to show that Appellant's grandfather expired on 14th May, 1950 and therefore, he could not have executed the Sale Deed dated 02nd August, 1950. He submitted that it is impossible to believe that the grandfather who purchased the suit property in the year 1947 for consideration of Rs.600/- would sell the same property in the year 1950 for consideration of Rs.300/-. He submitted that as the Respondent did not personally step into witness box, even presumption under section 90 of the Indian Evidence Act, 1872 could not have been applied to the Sale Deed.

5. I have considered the submissions. The Appellate Court has found that an attempt was made by the Appellant to establish that his grandfather

Yashwantrao expired on 14th May, 1950. The Appellate Court noted that entry of date 14th May, 1950 as the date of death of Yashwantrao was made in the municipal record as late as on 27th July, 1993. It is also found that the said entry was made at the instance of the Appellant. That is the reason why the Appellate Court has not accepted the case of the Appellant that Yashwantrao died on 14th May, 1950. Considering the stand taken by the Appellant and the evidence on record, the Appellate Court accepted the case of the Respondent that the Sale Deed dated 02nd August, 1950 was admissible in evidence by virtue of section 90 of the Indian Evidence Act, 1872.

6. There is no scope for interference as there are concurrent findings recorded by the courts below. No substantial question of law arises. Second Appeal is dismissed with no orders as to costs.

JUDGE